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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 105. COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 122476]** ( *Division 105 added by Stats. 1995, Ch. 415, Sec. 7. )*

**PART 4. HUMAN IMMUNODEFICIENCY VIRUS (HIV) [120775 - 121349.3]** ( *Part 4 added by Stats. 1995, Ch. 415, Sec. 7. )*

**CHAPTER 6. Human Immunodeficiency Virus (HIV) Treatment [120950 - 120971]** ( *Chapter 6 added by Stats. 1995, Ch. 415, Sec. 7. )*

**120950.** The Legislature hereby finds and declares all of the following:

- (a) State-of-art knowledge regarding treatment of people infected with the human immunodeficiency virus (HIV) indicates that active HIV infection (AIDS) can be a manageable, though chronic, condition with the use of drugs such as zidovudine (AZT), aerosolized pentamidine, and ganciclovir. AIDS experts across the nation agree that early intervention with these drugs can prolong life, minimize the related occurrences of more serious illnesses, reduce more costly treatments, and maximize the HIV-infected person's vitality and productivity.
- (b) For reasons of compassion and cost effectiveness, the State of California has a compelling interest in ensuring that its citizens infected with the HIV virus have access to these drugs.
- (c) The department subsidizes the cost of these drugs for persons who do not have private health coverage, are not eligible for Medi-Cal, or cannot afford to purchase the drug privately. The subsidy program is funded through state and federal sources.
- (d) Congress is expected to place limitations on the federal subsidy program that will jeopardize access to these life-prolonging drugs for people whose income is higher than federal income eligibility cap but lower than the state's income eligibility cap.
- (e) It is critical that suffering persons with limited income have access to life-prolonging drugs. It is also critical that persons currently eligible for the subsidy program remain eligible regardless of changes that may result from the congressional action and the enactment of this chapter. However, it is appropriate that people who can afford to pay a portion of the cost of treatment be obligated to share the cost of these drugs.

(*Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.*)

**120955.** (a) (1) To the extent that state and federal funds are appropriated in the annual Budget Act for these purposes, the director shall establish and may administer a program to provide drug treatments to persons infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immunodeficiency syndrome (AIDS). If the director makes a formal determination that, in any fiscal year, funds appropriated for the program will be insufficient to provide all of those drug treatments to existing eligible persons for the fiscal year and that a suspension of the implementation of the program is necessary, the director may suspend eligibility determinations and enrollment in the program for the period of time necessary to meet the needs of existing eligible persons in the program.

(2) The director, in consultation with the AIDS Drug Assistance Program Medical Advisory Committee, shall develop, maintain, and update as necessary a list of drugs to be provided under this program. The list shall be exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

(b) The director may grant funds to a county public health department through standard agreements to administer this program in that county. To maximize the recipients' access to drugs covered by this program, the director shall urge the county health department in counties granted these funds to decentralize distribution of the drugs to the recipients.

(c) The director shall establish a rate structure for reimbursement for the cost of each drug included in the program. Rates shall not be less than the actual cost of the drug. However, the director may purchase a listed drug directly from the manufacturer and

negotiate the most favorable bulk price for that drug.

(d) Manufacturers of the drugs on the list shall pay the department a rebate equal to the rebate that would be applicable to the drug under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) plus an additional rebate to be negotiated by each manufacturer with the department, except that no rebates shall be paid to the department under this section on drugs for which the department has received a rebate under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) or that have been purchased on behalf of county health departments or other eligible entities at discount prices made available under Section 256b of Title 42 of the United States Code.

(e) The department shall submit an invoice, not less than two times per year, to each manufacturer for the amount of the rebate required by subdivision (d).

(f) Drugs may be removed from the list for failure to pay the rebate required by subdivision (d), unless the department determines that removal of the drug from the list would cause substantial medical hardship to beneficiaries.

(g) The department may adopt emergency regulations to implement amendments to this chapter made during the 1997–98 Regular Session, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(h) Reimbursement under this chapter shall not be made for any drugs that are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision where exemption would represent a cost savings to the state.

(i) The department may also subsidize certain cost-sharing requirements for persons otherwise eligible for the AIDS Drug Assistance Program (ADAP) with existing non-ADAP drug coverage by paying for prescription drugs included on the ADAP formulary within the existing ADAP operational structure up to, but not exceeding, the amount of that cost-sharing obligation. This cost sharing may only be applied in circumstances in which the other payer recognizes the ADAP payment as counting toward the individual's cost-sharing obligation. The department may subsidize, using available federal funds and moneys from the AIDS Drug Assistance Program Rebate Fund, costs associated with a health care service plan or health insurance policy, including medical copayments and deductibles for outpatient care, and premiums to purchase or maintain health insurance coverage.

*(Amended by Stats. 2017, Ch. 52, Sec. 14. (SB 97) Effective July 10, 2017.)*

**120956.** (a) The AIDS Drug Assistance Program Rebate Fund is hereby created as a special fund in the State Treasury.

(b) All rebates collected from drug manufacturers on drugs purchased through the AIDS Drugs Assistance Program (ADAP) implemented pursuant to this chapter and, notwithstanding Section 16305.7 of the Government Code, interest earned on these moneys shall be deposited in the fund exclusively to cover costs related to the purchase of drugs and services provided through ADAP and the HIV prevention programs as described in Sections 120972, 120972.1, and 120972.2 and services related to HIV prevention and care and treatment for individuals living with HIV provided through the programs funded by the Transgender, Gender Nonconforming, and Intersex (TGI) Wellness and Equity Fund as described in Section 150900.

(c) Notwithstanding Section 13340 of the Government Code, moneys in the fund are continuously appropriated without regard to fiscal year to State Department of Public Health and available for expenditure for those purposes specified under this section.

*(Amended by Stats. 2025, Ch. 21, Sec. 37. (AB 116) Effective June 30, 2025.)*

**120960.** (a) The department shall establish uniform standards of financial eligibility for the drugs under the program established under this chapter.

(b) Nothing in the financial eligibility standards shall prohibit drugs to an otherwise eligible person whose modified adjusted gross income does not exceed 500 percent of the federal poverty level per year based on family size and household income. However, the director may authorize drugs for persons with incomes higher than 500 percent of the federal poverty level per year based on family size and household income if the estimated cost of those drugs in one year is expected to exceed 20 percent of the person's modified adjusted gross income. Beginning January 1, 2025, or as soon as technically feasible thereafter, the financial eligibility standard in this section shall increase to 600 percent of the federal poverty level per year based on family size and household income.

(c) A county public health department administering this program pursuant to an agreement with the director pursuant to subdivision (b) of Section 120955 shall use no more than 5 percent of total payments that it collects pursuant to this section to cover any administrative costs related to eligibility determinations, reporting requirements, and the collection of payments.

(d) A county public health department administering this program pursuant to subdivision (b) of Section 120955 shall provide all drugs added to the program pursuant to subdivision (a) of Section 120955 within 60 days of the action of the director.

(e) For purposes of this section, the following terms shall have the following meanings:

(1) "Family size" has the meaning given to that term in Section 36B(d)(1) of the Internal Revenue Code of 1986, and shall include same or opposite sex married couples, registered domestic partners, and any tax dependents, as defined by Section 152 of the Internal Revenue Code of 1986, of either spouse or registered domestic partner.

(2) "Federal poverty level" refers to the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of Section 9902(2) of Title 42 of the United States Code.

(3) "Household income" means the sum of the applicant's or recipient's modified adjusted gross income, plus the modified adjusted gross income of the applicant's or recipient's spouse or registered domestic partner, and the modified adjusted gross incomes of all other individuals for whom the applicant or recipient, or the applicant's or recipient's spouse or registered domestic partner, is allowed a federal income tax deduction for the taxable year.

(4) "Internal Revenue Code of 1986" means Title 26 of the United States Code, including all amendments enacted to that code.

(5) "Modified adjusted gross income" has the meaning given to that term in Section 36B(d)(2)(B) of the Internal Revenue Code of 1986.

*(Amended by Stats. 2025, Ch. 21, Sec. 38. (AB 116) Effective June 30, 2025.)*

**120962.** (a) (1) For the purpose of verifying financial eligibility pursuant to Section 120960 and the federal Ryan White HIV/AIDS Treatment Extension Act of 2009 (42 U.S.C. Sec. 201 et seq.), the department shall verify the accuracy of the modified adjusted gross income reported on an AIDS Drug Assistance Program application submitted by an applicant or recipient with data, if available, from the Franchise Tax Board.

(2) Notwithstanding any other law, the department shall disclose the name and individual taxpayer identification number (ITIN) or social security number of an applicant for, or recipient of, services under this chapter to the Franchise Tax Board for the purpose of verifying the modified adjusted gross income of, any tax-exempt interest received by, any tax-exempt social security benefits received by, and any foreign earned income of an applicant or recipient pursuant to subdivision (b) of Section 120960.

(b) (1) The Franchise Tax Board, upon receipt of this information, shall inform the department of all of the following:

(A) The amount of the federal adjusted gross income received by the taxpayer household as reported by the taxpayer to the Franchise Tax Board.

(B) The amount of the California adjusted gross income received by the taxpayer household as reported by the taxpayer to the Franchise Tax Board or as adjusted by the Franchise Tax Board.

(C) The amount of any tax-exempt interest received by the taxpayer household, as reported to the Franchise Tax Board.

(D) The amount of any tax-exempt social security benefits received by the taxpayer household, as reported to the Franchise Tax Board.

(E) The amount of any foreign earned income of the taxpayer household, as reported to the Franchise Tax Board.

(F) The family size of the taxpayer household, as reported to the Franchise Tax Board.

(2) The Franchise Tax Board shall provide the information to the department for the most recent taxable year that the Franchise Tax Board has information available, and shall include the first and last name, date of birth, and the ITIN or social security number of the taxpayer.

(c) (1) Information provided by the department pursuant to this section shall constitute confidential public health records as defined in Section 121035, and shall remain subject to the confidentiality protections and restrictions on further disclosure by the recipient under subdivisions (d) and (e) of Section 121025.

(2) To the extent possible, verification of financial eligibility shall be done in a way to eliminate or minimize, by use of computer programs or other electronic means, Franchise Tax Board staff and contractors' access to confidential public health records.

(3) Prior to accessing confidential HIV-related public health records, Franchise Tax Board staff and contractors shall be required to annually sign a confidentiality agreement developed by the department that includes information related to the penalties under Section 121025 for a breach of confidentiality and the procedures for reporting a breach of confidentiality under subdivision (h) of Section 121022. Those agreements shall be reviewed annually by the department.

(4) The Franchise Tax Board shall return or destroy all information received from the department after completing the exchange of information.

(d) For purposes of this section, "foreign earned income" also includes any deduction taken for the housing expenses of an individual while living abroad pursuant to Section 911 of Title 26 of the Internal Revenue Code.

(e) For purposes of this section, "household" means the applicant or recipient, and, in addition, the applicant's or recipient's spouse or registered domestic partner, and all other individuals for whom the applicant or recipient, or the applicant's or recipient's spouse or registered domestic partner, is allowed a federal income tax deduction for the taxable year.

(f) For purposes of this section, "family size" has the meaning given to that term in Section 36B(d)(1) of Title 26 of the Internal Revenue Code, and includes same or opposite sex married couples, registered domestic partners, and any dependent, as defined by Section 152 of Title 26 of the Internal Revenue Code, of either spouse or registered domestic partner.

*(Amended by Stats. 2020, Ch. 12, Sec. 8. (AB 80) Effective June 29, 2020.)*

**120966.** (a) (1) The program established under this chapter shall make available to any eligible person under this chapter any antiviral drug that is approved by the federal Food and Drug Administration for treatment of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS), prescribed by the beneficiary's medical care provider, and approved by the AIDS Drug Assistance Program Medical Advisory Committee of the Office of AIDS if determined by the State Department of Health Services that the new antiviral drug would be used as an additional treatment option, and anticipated client utilization represents no significant additional cost to the program and does not require the removal of another antiviral drug from the formulary.

(2) Any federal Food and Drug Administration-approved antiviral drug that is determined by the State Department of Health Services to represent a significant additional cost to the program shall be made available if, after an analysis is conducted by the department, it determines that the program has an adequate budget to fund the addition of the new drug.

(3) The department shall use all reasonable means to ensure that the determination required in paragraph (1) or the analysis required by paragraph (2) are performed as promptly as possible.

(b) Notwithstanding any other provision of law, any antiviral drug that is approved pursuant to paragraph (1) of subdivision (a) for addition to the formulary of drugs program established by this chapter shall be available to patients covered by the program established by this chapter within 30 days of the Office of AIDS being notified by the drug's manufacturer of the FDA approval.

*(Added by Stats. 1999, Ch. 497, Sec. 1. Effective January 1, 2000.)*

**120968.** The Office of AIDS shall report to the Legislature no later than October 1, 2000, the status of consumer protections for the AIDS drug program established pursuant to this chapter, including a report on the contractor's performance in each of the following areas:

(a) Filling of patient prescriptions within 24 hours of submission, and shipping of mail order prescriptions within 48 hours.

(b) Subcontracting with any willing provider, including a report on any denials of contracts with providers and the reason for denial.

(c) Provision of information regarding program policies, procedures, enrollment procedures, eligibility guidelines, and lists of drugs covered in appropriate literacy levels in English, Spanish, Mandarin/Cantonese, Tagalog, and in other languages as determined by the department.

(d) Development of a timely and accessible grievance procedure for clients, promotion of that procedure among clients, and utilization.

*(Added by Stats. 1999, Ch. 497, Sec. 2. Effective January 1, 2000.)*

**120970.** If the department utilizes a contractor or subcontractor to administer any aspect of the program provided for under this chapter, the following additional client assistance provisions shall apply:

(a) The contractor shall, either directly or through subcontracted pharmacy outlets, obtain and dispense the necessary drugs, in their approved forms according to the program formulary, and shall comply with all applicable provisions of the California Pharmacy Law (Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code) and regulations adopted thereunder.

(b) Upon receipt of notification by the department, the contractor shall be able to accommodate additions or changes in the formulary within 10 business days.

(c) Clients shall receive drugs from a participating pharmacy either directly, through the client's designated representative, or mailed or delivered to the client's place of residence by the contractor or subcontractor, whichever the client prefers. Proof of delivery of the prescription to the client's designated address, by signature acknowledging receipt thereof, shall be required for all mail order prescriptions.

(d) Clients shall have their prescriptions filled within 24 hours of submission of prescription requests, and mail order prescriptions shall be shipped by the contractor within 48 hours of receipt of client prescription requests.

(e) The contractor shall provide 24-hour free telephone and fax machine access for physicians and surgeons, or medical care providers as authorized under state law, to call in or transmit prescriptions for mail order pharmacy.

(f) Clients shall have toll-free telephone access during business hours to speak with licensed pharmacists for medication counseling and for mail order prescription requests. The contractor shall provide consultation in the prevention of potentially harmful drug interactions in connection with prescriptions filled for clients.

(g) The contractor shall have the ability to subcontract with any willing provider, including independent and sole proprietorship pharmacies, provided the subcontractor accepts the rates offered by the contractor, supplies the contractor with timely information, and complies with necessary contract terms and conditions and other needs of the program as determined by the contractor or the department.

(h) It is the intent of the Legislature that the contractor subcontract with all willing providers accepting the terms and conditions provided for in subdivisions (a) to (g), inclusive, in order to facilitate continuity of care for clients under this chapter.

(i) All types of information, whether written or oral, concerning a client, made or kept in connection with the administration of ADAP services, which includes subsidizing costs associated with health care service plan contracts and health insurance premium payment assistance, shall be confidential, and shall not be used or disclosed except for any of the following:

(1) For purposes directly connected with the administration of the program.

(2) For coordinating client eligibility with programs funded by the federal Ryan White HIV/AIDS Program (Ryan White HIV/AIDS Treatment Extension Act of 2009, (Public Law 111-87, 42 U.S.C. Sec. 201, et seq.)).

(3) If disclosure is otherwise authorized by law.

(4) Pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator.

(j) Information regarding program policies and procedures, including enrollment procedures, eligibility guidelines, and lists of drugs covered, shall be made available to clients in appropriate literacy levels in English, Spanish, Mandarin/Cantonese, Tagalog, and in other languages, as determined by the department.

(k) The contractor shall develop and maintain a timely and accessible grievance procedure for clients to resolve problems regarding all components of the delivery of drugs under this chapter.

*(Amended by Stats. 2017, Ch. 52, Sec. 16. (SB 97) Effective July 10, 2017.)*

**120971.** (a) In the event state expenditures for the AIDS Drug Assistance Program (ADAP) are identified by California to be used as a certified public expenditure for the purpose of obtaining federal financial participation under the Medi-Cal program for any purposes, including federal demonstration waivers, the State Department of Health Care Services and the State Department of Public Health shall ensure the integrity of the ADAP in meeting its maintenance-of-effort requirements to receive federal funds and to obtain all ADAP drug rebates to support the ADAP.

(b) The State Department of Health Care Services and the State Department of Public Health shall keep the appropriate policy and fiscal committees of the Legislature informed of any potential concerns that may arise in the event that state expenditures for the ADAP are used as a certified public expenditure as described in subdivision (a).

*(Added by Stats. 2010, Ch. 717, Sec. 15. (SB 853) Effective October 19, 2010.)*